



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 559

IN THE MATTER
OF
FRED L. GILMETTI

DISPOSITION AGREEMENT

The State Ethics Commission ("Commission") and Fred L. Gilmetti ("Gilmetti") enter into this Disposition Agreement ("Agreement") pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On July 11, 1995, the Commission initiated, pursuant to G.L. c. 268B, §4(j), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Gilmetti. The Commission has concluded its inquiry and, on April 29, 1996, found reasonable cause to believe that Gilmetti violated G.L. c. 268A, §17(c).

The Commission and Gilmetti now agree to the following findings of fact and conclusions of law:

1. Gilmetti was, during the time relevant, a Whitman Planning Board (the "Board") member. As such, Gilmetti was a special municipal employee as that term is defined in G.L. c. 268A, §1.¹ Gilmetti has been a member of the Board since 1978.

2. During the time relevant, Gilmetti was president of F.L.G. Builders, Inc., a general construction contractor. During this time, Gilmetti did not earn a salary from the company.

3. On October 15, 1991, the Board approved a two-lot subdivision on Pin Oak Way. In November 1991, F.L.G. Builders, Inc. entered into negotiations to buy the subdivision. As part of the agreement, it was assumed that F.L.G. Builders, Inc. would construct a road for the subdivision.

4. Due to financial difficulties, F.L.G. Builders, Inc. was only able to purchase one of the two lots. Nevertheless, it was agreed that F.L.G. Builders, Inc. would still build the road. The total bond for the work was \$22,000, of which F.L.G. Builders, Inc. put up \$11,000, and the seller put up the remainder.

5. By February 1, 1994, F.L.G. Builders, Inc. had not completed the road. During a Board meeting on February 1, 1994, the other lot owner and the original owner of the subdivision requested a completion date for the road. Gilmetti, speaking on behalf of F.L.G. Builders, Inc. and not as a Board member,² stated that the work would be completed by May 31, 1994, weather permitting.

6. As of June 14, 1994, the road work had not been completed. During a Board meeting on this date, the Board decided to grant an extension of August 1, 1994, for the completion of the road.

7. During a Board meeting on July 12, 1994, the Board read a letter from Gilmetti, on behalf of F.L.G. Builders, Inc., pertaining to a manhole issue at the road site. The letter stated that Gilmetti had investigated an allegation that a drain manhole cover had been buried, and that F.L.G. Builders, Inc., or any of its agents, was in no way responsible for the unlawful burying of any materials on Pin Oak Way.

8. During a Board meeting on August 2, 1994, Gilmetti reported that the road had been completed. Gilmetti requested release of the bond for the work. The Board's engineer recommended that the Board wait until it

rained to insure that there was proper drainage. The Board voted to hold \$500 of the bond.

9. Section 17(c) of G.L. c. 268A prohibits a municipal employee from acting as agent or attorney for anyone other than the municipality in relation to a particular matter in which the town has a direct and substantial interest.

10. The ongoing determination by the Board as to whether the Pin Oak Way road construction was adequate and whether it should release the performance bond involved determinations and/or decisions which were particular matters.

11. By appearing before and submitting a letter to the Board on behalf of F.L.G. Builders, Inc. regarding the Pin Oak Way road construction particular matter, Gilmetti acted as agent for F.L.G. Builders, Inc. in relation to a particular matter in which the town had a direct and substantial interest, thereby violating §17(c).

In view of the foregoing violations of G.L. c. 268A by Gilmetti, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Gilmetti:

(1) that Gilmetti pay to the Commission the sum of one thousand dollars (\$1,000) as a civil penalty for violating G.L. c. 268A, §17; and

(2) that Gilmetti waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: November 1, 1996

¹Gilmetti is still a member of the Whitman Planning Board.

²Gilmetti abstained from participating as a Board member on all matters pertaining to the Pin Oak Way road construction.